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12 Attorneys for Defendant  
13 RAMESH "SUNNY" BALWANI

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

17 UNITED STATES OF AMERICA,  
18  
19 Plaintiff,  
20  
21 v.  
22  
23 RAMESH "SUNNY" BALWANI,  
24  
25 Defendant.

Case No. 18-CR-00258-EJD

**DECLARATION OF JEFFREY B.  
COOPERSMITH IN SUPPORT OF  
DEFENDANT RAMESH BALWANI'S  
MOTIONS IN LIMINE**

Judge: Honorable Edward J. Davila

**DECLARATION OF JEFFREY B. COOPERSMITH**

I, Jeffrey B. Coopersmith, declare as follows:

A. I am lead counsel for defendant Ramesh “Sunny” Balwani in this case, an attorney admitted to practice in the State of California, and a partner at the law firm of Orrick, Herrington & Sutcliffe LLP. I submit this declaration in support of Mr. Balwani’s motions in limine and *Daubert* motions to exclude expert testimony. Attached to this declaration are exhibits cited in those motions.

B. Mr. Balwani’s motions are supported by 44 exhibits. Four exhibits (Exhibits 3, 4, 41 and 42) are also attached in sealed, unredacted form as attachments to Mr. Balwani’s Administrative Motion to Seal Certain Exhibits to His Motions in Limine. The exhibits are as follows:

1. Exhibit 1 is copy of transcript excerpts from the trial of Mr. Balwani’s co-defendant Elizabeth Holmes.

2. Exhibit 2 is a copy of a Theranos Patent Portfolio Summary, listed as Exhibit DX7709 on Ms. Holmes’ trial exhibit list.

3. Exhibit 3 is a copy of a March 30, 2020 FBI Form 302 Summary of Interview with E.T., Bates-stamped US-REPORTS-0015081. This exhibit is filed with Mr. Balwani’s administrative motion to seal.

4. Exhibit 4 is a copy of a March 30, 2020 FBI Form 302 Summary of Interview with B.B., Bates-stamped US-REPORTS-0015058. This exhibit is filed with Mr. Balwani’s administrative motion to seal.

5. Exhibit 5 is a copy of an August 26, 2015 letter from Theranos to the FDA attaching a list of Theranos proprietary laboratory-developed tests (“LDTs”), Bates-stamped US-FDA-0015698.

6. Exhibit 6 is a copy of OraQuick ADVANCE Rapid HIV-1/2 Antibody Test Customer Letter, listed as Exhibit 0428 on the government’s November 5, 2021 trial exhibit list.

1           7.       Exhibit 7 is a copy of a Bio-Rad Multispot HIV-1/HIV-2 Rapid Test  
2 manual, listed as Exhibit 0808 on the government's November 5, 2021 trial exhibit list.

3           8.       Exhibit 8 is a copy of Theranos Standard Operating Procedure for  
4 Multispot HIV-1/HIV-2 Rapid Test, listed as Exhibit 1862 on the government's  
5 November 5, 2021 trial exhibit list.

6           9.       Exhibit 9 is an excerpt of a Theranos Standard Operating Procedure for  
7 Operation and Maintenance of the Siemens ADVIA Centaur XP, listed as Exhibit 1927 on  
8 the government's November 5, 2021 trial exhibit list.

9           10.      Exhibit 10 is a copy of a Theranos Quantitative Method Validation Report  
10 for the Abbott Real Time HIV-1 Assay, listed as Exhibit 5062 on the government's  
11 November 5, 2021 trial exhibit list.

12          11.      Exhibit 11 is a copy of a Theranos clinical study report summary for  
13 establishing allowable difference between Theranos LDTs and commercial hematology  
14 analyzers for the CBC assay, Bates-stamped THPFM0003814256.

15          12.      Exhibit 12 is a copy of a Theranos Verification Plan for DREW3, an  
16 Automated Hematology Analyzer, Bates-stamped THPFM0005699178.

17          13.      Exhibit 13 is a copy of a Theranos Standard Operating Procedure, BD  
18 LSRFortessa, listed as Exhibit 1111 on the government's November 5, 2021 trial exhibit  
19 list.

20          14.      Exhibit 14 is a copy of a Theranos Standard Operating Procedure, CBC:  
21 Tecan 1, Tecan 2, Drew, Fortessa, and Canto, listed as Exhibit 2685 on the government's  
22 November 5, 2021 trial exhibit list.

23          15.      Exhibit 15 is a copy of Theranos Validation Report for Theranos LDT for  
24 Complete Blood Count with Differential, Bates-stamped THPFM0002267542.

25          16.      Exhibit 16 is a copy of a November 5, 2021 email from AUSA Kelly  
26 Volkar to Mr. Balwani's defense counsel.

1           17. Exhibit 17 is a copy of a January 25, 2016 letter from Centers for Medicare  
2 and Medicaid Services (“CMS”), listed as Holmes trial Exhibit 4621A, reflecting  
3 Mr. Balwani’s proposed redactions in highlighted text.

4           18. Exhibit 18 is a copy of the January 25, 2016 CMS Form 2567 Survey  
5 Findings, listed as Holmes trial Exhibit 4621B, reflecting Mr. Balwani’s proposed  
6 redactions in highlighted text.

7           19. Exhibit 19 is a copy of a January 25, 2016 letter from CMS, listed as  
8 Holmes trial Exhibit 4621A, unredacted, as retrieved from the Court’s public website.

9           20. Exhibit 20 is a copy of the January 25, 2016 CMS Form 2567 Survey  
10 Findings, listed as Holmes trial Exhibit 4621B, unredacted, as retrieved from the court’s  
11 public website.

12           21. Exhibit 21 is a copy of a Theranos PT/INR Patient Impact Assessment,  
13 listed as Exhibit 4982 on the government’s November 5, 2021 trial exhibit list.

14           22. Exhibit 22 is a copy a February 1, 2021 U.S. Postal Inspection Service  
15 Memorandum of Interview with Dr. Kingshuk Das, Bates-stamped US-REPORTS-  
16 0024149.

17           23. Exhibit 23 is a copy of a February 3, 2021 U.S. Postal Inspection Service  
18 Memorandum of Interview with Dr. Kingshuk Das, Bates-stamped US-REPORTS-  
19 0024246.

20           24. Exhibit 24 is a copy of a Theranos Laboratory Information System User  
21 App Guide, Bates-stamped THPFM0003355246.

22           25. Exhibit 25 is a copy of excerpts from the transcript of the March 22, 2017  
23 deposition of Max Fosque, Bates-stamped PFM-DEPO-00008933.

24           26. Exhibit 26 is a copy of excerpts from the transcript of the April 23, 2019  
25 deposition of Sekhar Variam, Bates-stamped TRANSCRIPTS-004447.

26           27. Exhibit 27 is a copy of a June 4, 2018 email exchange among attorneys at  
27 WilmerHale, Bates-stamped WH000002070.  
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1           28.     Exhibit 28 is an excerpt of an October 29, 2020 letter from AUSA Robert  
2     Leach to defense counsel.

3           29.     Exhibit 29 is a copy of excerpts from a September 28, 2020 letter from the  
4     prosecution team to defense counsel.

5           30.     Exhibit 30 is a copy of a November 11, 2021 email exchange between  
6     Amy Walsh and AUSA Robert Leach.

7           31.     Exhibit 31 is a copy of text messages apparently exchanged between  
8     Ms. Holmes and Mr. Balwani on October 16, 2015, excerpted from Holmes trial Exhibit  
9     5387C.

10          32.     Exhibit 32 is a copy of excerpts a February 12, 2016 letter from Theranos  
11     General Counsel Heather King to Karen Fuller of CMS attaching Theranos' Plan of  
12     Correction in response to CMS's Statement of Deficiencies, Bates-stamped  
13     THPFM0004755071.

14          33.     Exhibit 33 is a copy of Holmes trial Exhibit 4943, excerpts of a Theranos  
15     Patient Impact Assessment.

16          34.     Exhibit 34 is a copy of excerpts from transcript of the December 6, 2019  
17     deposition of Gary Yamamoto, Bates-stamped SEC-DEPO-007562.

18          35.     Exhibit 35 is a copy of excerpts from the transcript of the January 29, 2020  
19     deposition of Sarah Bennett, Bates-stamped SEC-DEPO-001266.

20          36.     Exhibit 36 is a copy of a September 12, 2017 FDA Memorandum of  
21     Interview of Sarah Bennett, Bates-stamped US-REPORTS-0006781.

22          37.     Exhibit 37 is a copy of a December 12, 2017 FDA Memorandum of  
23     Interview of Gary Yamamoto, Bates-stamped US-REPORTS-0007018.

24          38.     Exhibit 38 is a copy of a January 20, 2020 email exchange between  
25     Mr. Balwani's counsel and counsel for the government, the SEC, and HHS, attaching a  
26     signed errata sheet for Gary Yamamoto.

1           39. Exhibit 39 is a copy of a March 23, 2020 email exchange between  
2 Mr. Balwani's counsel and counsel for the government, the SEC, and HHS, attaching  
3 signed errata sheets for Gary Yamamoto and Sarah Bennett.

4           40. Exhibit 40 is a copy of a November 5, 2021 FDA Memorandum of  
5 Interview of Dr. Kingshuk Das, Bates-stamped US-REPORTS-0037957.

6           41. Exhibit 41 is a copy of a November 10, 2021 letter from the government  
7 disclosing coconspirator statements the government intends to offer against Mr. Balwani.  
8 The exhibit is redacted to shield the identities of alleged unindicted coconspirators in the  
9 charged conspiracies. An unredacted copy of this exhibit is filed with Mr. Balwani's  
10 administrative motion to seal.

11           42. Exhibit 42 is a copy of a June 26, 2020 letter from the government  
12 disclosing coconspirator statements the government intends to offer against Elizabeth  
13 Holmes. The exhibit is redacted to shield the identities of alleged unindicted  
14 coconspirators in the charged conspiracies. An unredacted copy of this exhibit is filed  
15 with Mr. Balwani's administrative motion to seal.

16           43. Exhibit 43 is a copy of a Federal Reserve Form T-4, Bates-stamped  
17 Balwani-1746.

18           44. Exhibit 44 is a copy of a July 7, 2016 letter from Mr. Balwani, Bates-  
19 stamped THPFM0004657612.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed November 19, 2021 at San Jose, California.

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23 s/Jeffrey B. Coopersmith  
24 JEFFREY B. COOPERSMITH  
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